

Regents of Southwest State University, 887 SW 2d 744, 750-51 (MO. App. 1994);
Snitow v. Rutgers University, 103 N.J. 116, 124-25, 510 A 2d 1118 (1986). It is a settled principal of administrative law that if an adequate administrative remedy exists, it must be exhausted before the court will obtain jurisdiction to act. The exhaustion of remedies doctrine holds that the court does not have subject matter jurisdiction over an action if plaintiff has not exhausted the remedies available through an internal grievance procedure.

Plaintiffs will not be prejudiced by the Court's allowance of this Motion. The case was only filed in June 2004, no Rule 16 Conference has been held, no hearing has been scheduled on the previously-filed motion to dismiss, no discovery has been commenced by the parties, and no trial date has been set. In the instant action, justice requires that Defendants be allowed to amend their Motion to Dismiss to include the affirmative defense that Plaintiff Thomas M. Edsall has failed to exhaust their administrative remedies and the Court, therefore, does not have subject matter jurisdiction of Plaintiffs' claims.

Dated: August 20, 2004

Respectfully submitted,

Defendants,

ASSUMPTION COLLEGE,
DR. THOMAS R. PLOUGH,
DR. JOSEPH F. GOWER, and
DR. JOHN F. MCCLYMER,

By their attorneys,

_____/s/_____
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CERTIFICATE OF SERVICE

I, Douglas F. Seaver, hereby certify that I have this 20th day of August, 2004 forwarded a copy of Memorandum in Support of Defendants' Motion To Amend Motion to Dismiss to Include Rule 12(b)(1) Defense via e-mail and Defendants' Motion To Amend Answer To Include Additional Affirmative Defense first class mail, postage pre-paid to Plaintiffs' counsel of record: James B. Krasnoo, Esq. & Paul J. Klehm, 23 Main Street, Terrace Level, Andover, MA 01810.

_____/s/_____
Douglas F. Seaver